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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,779	02/13/2002	Satoshi Mizutani	2309/OK299	9184
7590	07/22/2004		EXAMINER	
DARBY & DARBY P.C. 805 Third Avenue New York, NY 10022			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/075,779	MIZUTANI ET AL.
Examiner	Art Unit	
Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 27 April 2004.

2a) This action is **FINAL**.                                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-22 is/are pending in the application.

4a) Of the above claim(s) 3,4 and 9-22 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,2 and 5-8 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 13 February 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/13/02, 4/6/04.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of the species of Figures 1-3 in the reply filed on 4-27-04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 3-4, and 9-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4-27-04.

Claims 3-4 and 9 were also withdrawn since the features claimed therein were not shown in the Figures of the elected species.

3. The election requirement set forth in Paper No. 3 is maintained as proper and made FINAL.

### ***Specification***

#### ***Drawings***

4. The drawings are objected to because in Figures 1 and 6, the line from 3a should be dashed to denote underlying structure. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should

not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Description***

5. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: page 4, line 15, page 5, line 18, page 10, lines 10-13, page 13, line 7.

6. The disclosure is objected to because of the following informalities: The description of the portion of the three dimensional portion having certain dimensions is unclear since the Summary of the Invention section of the specification and claim 7 set forth it is the three dimensional portion whereas page 33, lines 13-18 set forth it is the skin contactable portion. A consistent description should be set forth.

Appropriate correction is required.

***Claim Language Interpretation***

7. Since Applicants have not defined any claim terminology specifically, the terminology will be given its common, i.e. dictionary, definition.

***Claim Objections***

8. Claims 1-2, and 5-8 are objected to because of the following informalities: in claim 1, “contacting”(all) should be --contactable--. On line 14, before, “corresponding”, --a-- should be inserted. In claim 5, “contacting” should be --contactable--. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-2 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimura PCT ‘082.

Claims 1-2: See Figures, especially 1-3, abstract, page 4, lines 19-22, page 8, line 4-page 9, line 13, page 12, lines 17-21, page 15, lines 5-7 and 14-22, and claims, i.e. the back layer is 20, the absorbent is 31 or 33, the three dimensional portion is at least the layer 10 of 40 having fixed ends adjacent 31 in Figures 2 and 3, a skin contactable portion 31a and connecting portions

therebetween, the elastic members are 50, see also Figures 3 and 4. It is noted that the claims, for example, teach that a pressure sensitive adhesive is not required on the back layer during use.

Claims 5-6: See discussion of claims 1-2, as well as page 9, lines 6-8, page 12, lines 17-21 and page 15, lines 14-22 again. Claims 5-6 recite properties, functions or capabilities of the structure claimed in claims 1-2. The Kimura reference teaches such structure. Therefore, there is sufficient factual basis for one to conclude that the properties, functions or capabilities of such claimed structure would also be inherent in the same structure of Kimura, see MPEP 2112.01.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura '082 in view of Mayer et al '614.

The Kimura reference teaches a sanitary napkin which absorbs body fluid and fits to the wearer's body having a centrally located elasticated three dimensional member which rises from the remainder of the napkin which member has a width of 10mm to 50mm and appears to be about 1/3 of the total width of the napkin and has a length of 15% to 90% of the entire length of the napkin. Applicants claim a three dimensional portion having not only a width of 20mm to 40mm but a length of between 50-70mm and a main body which has a width of 40-60mm and a length of 80-120mm which are not clearly taught by Kimura (as noted above the length of the

three dimensional member is expressed as a percentage of the length of the main body). However, Mayer et al '614 also teaches a sanitary napkin which absorbs body fluid and fits to the wearer's body having a centrally located three dimensional member which may be elasticated and rises from the remainder of the napkin and not only has lengths and widths commensurate with those set forth by Kimura but also the lengths and widths claimed as well. See, e.g., Figures, col. 1, lines 6-12, col. 3, lines 66-67, col. 8, lines 19-27, col. 11, lines 12-22, col. 13, lines 55 et seq. Therefore, to employ the dimensions as taught by Mayer et al on the Kimura device (if not already taught by Kimura) would be obvious to one of ordinary skill in the art in view of the recognition that such dimensions are known for sanitary napkins which absorb body fluids and fit to the wearers body having a centrally located three dimensional member which rises from the remainder of the napkin and the desire of Kimura to define such a napkin.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other prior art references also teach three dimensional members.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*K. M. Reichle*  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
July 20, 2004